

UNITED STATES COURT OF APPEALS SEVENTH DISTRICT
CLERK OF COURT

U.S.C.A.-7TH CIRCUIT
RECEIVED
AUG 17 2016 RMS
GINO J. AGNELLO
CLERK

FREDERICK R. SCHMITT,

PETITIONER,

v.

CASE NO:16-CV-93-jdp

RICHLAND COUNTY CLERK OF CIRCUIT COURT, AND JUDGE LEINEWEBER, ET AL.,

RESPONDENTS.

PETITIONER FREDERICK R. SCHMITT IS CURRENTLY A PRISONER AT THE REGRANITE CORRECTIONAL INSTITUTION. HE SOUGHT A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. STAT. 2254 TO CHALLENGE HIS 2007 CONVICTION FROM THE CIRCUIT COURT FOR RICHLAND COUNTY, PETITIONER SCHMITT IS PROCEEDING PRO SE.

THE DISTRICT COURT GAVE MR. SCHMITT, THE PETITIONER AN OPPORTUNITY TO RESPOND TO THIS ORDER AND EXPLAIN WHY THE CASE SHOULD PROCEED, AS IT IS UNTIMELY.

PETITIONER ALSO REQUESTS THE ASSISTANCE OF COUNSEL.

THAT REQUEST WAS SHORTENED BECAUSE AS THE COURT STATED, MR. SCHMITT HAS NOT SHOWN THAT HE IS FINANCIALLY ELIGIBLE BUT THIS IS NOT CORRECT BECAUSE OF THE FAILURE TO HAVE THE REPORT FILLED FROM DOC REDGRANITE STAFF, IT WAS SENT OUT ON 07-26-2016 FOR WHICH IT WAS ORDERED ON JULY 21, 2016 THAT MR. SCHMITT HAS UNTIL AUGUST, 11, 2016 TO RESPOND. AN INMATE HAS AFTER DEPOSITING IN PRISON MAILBOX, AN ADDITIONAL 3 DAYS BEING DUE NO LATER THAN AUGUST 14, 2016.

THERE IS A DESCRIPTENCY IN THE LETTER DATED BY THE COURT BY JUDGE PETERSON, ON AUGUST 09, 2016, DENYING AND CLOSING THE CASE OF 16-CV-93-jdp, EVEN BEFORE THE JUDGE COULD RULE ON MR. SCHMITT'S INDIGENCY REPORT FROM THE PRISON WHICH WAS SENT IN A SEPARATE ENVELOPE, MAILED ON JULY 27, 2016 , for which is LISTED AS EXHIBIT (A) AND ON JULY 27, 2016, A COPY OF THE MAILING OF PETITIONER'S TO THE COURT'S REQUEST

JULY 21, 2016, IS MARKED AS EXHIBIT (B)

IN RESPONSE TO THE COURT'S NO RESPONSE FROM PETITIONER SCHMITT, DATED AUGUST 09, 2016, MR. SCHMITT DID INCLUDE REASONING AS TO HE WAS/IS DILIGENT, EQUITABLE TOOLING, INDIGENT PRO SE INMATE IN PRISON, DEMONSTRATED ACTUAL INNOCENCE BEING DENIED IS INCORRECT REGARDING THE RESPONSE DOCUMENT SENT TO THE COURT.

MR. SCHMITT ALSO SENT HIS RESPONSE AS TO HIS UNTIMELINESS IN FILING HIS PETITION. THERE HAS BEEN AN INJUSTICE AS TO THE WRIT OF HABEAS CORPUS FILED IN FEDERAL COURT IN THE WESTERN DISTRICT OF WISCONSIN.

** ARGUMENTS **

- (A) THE STATE COURT PROCEEDING VIOLATED A CLEARLY ESTABLISHING PRINCIPLE OF FEDERAL CONSTITUTIONAL LAW:
- (B) THE FEDERAL CONSTITUTIONAL ERROR "HAD SUBSTANTIAL AND INJURIOUS EFFECT OR INFLUENCE" IN DETERMING THE OUTCOME OF THE STATE COURT PROCEEDING CREATING "ACTUAL PREJUDICE". SEE BRECHT V. ABRAHAMSON, 507 U.S. 619, 637 (1993):

RIGHT OF WHAT YOU CANNOT DO: UNLESS YOU THINK SOMEONE VIOLATED A CLEARLY ESTABLISHED FEDERAL CONSTITUTIONAL RIGHT AS IN TRYING TO CHALLENGE STATE STATUTES OR STATE CASE LAW:

- (C) VIOLATIONS OF YOUR FEDERAL CONSTITUTIONAL RIGHT TO EFFECTIVENESS OF COUNSEL ONLY IF:
 - (1) YOUR ATTORNEY ACTED UNREASONABLY; ATTORNEY'S ACTION PREJUDICED PETITIONER IN HIS/HER CASE.

AS TO THE LISTED ISSUES OF (A,B,C), THERE IS A NEWLY DISCOVERED EVIDENCE DATED AUGUST 05, 2016 FROM MR. SCHMITT'S EX TRIAL ATTORNEY REGARDING THE ILLEGAL CORRUPTION REGARDING THE ATTORNEY OF PERJURY FRAUD BECAUSE IN THE ATTORNEY'S LETTER, HE DESCRIBED THAT THE TRIAL PROSECUTOR PAID HIM \$3,000 TO THROW AWAY THE TRIAL AND PUT MR. SCHMITT IN PRISON FOR A LONG TIME.

THIS HAS BEEN A SECRET FOR A LONG TIME SINCE 2007, TO NOW.

MR. SCHMITT WAS SINCERELY PREJUDICED OF HIS CONSTITUTIONAL AND DUE PROCESS RIGHTS BEING IN PRISON WHEN INNOCENT OF ANY TYPE OF CRIME THAT THE RICHLAND COUNTY CIRCUIT COURT SYSTEM CREATED BY A JUDGE, PROSECUTOR, AND TRIAL ATTORNEY.

UPON STATUTE 2254 RELIEF:

LIMITED EXCEPTIONS:

YOU MAY FILE A STAT.2254 PETITION OUTSIDE OF THE ONE YEAR LIMIT BASED UPON NEWLY DISCOVERED FACTS:DATE OF FACTS WERE DISCOVERED WITH "DUE DILIGENCE".

SEE ENCLOSED COPY OF THE LETTER FROM THE EX TRIAL ATTORNEY MARKED AS EXHIBIT (D):

SEE 28 U.S.C. STAT.2254 (d)(1)(D):

THE NEWLY DISCOVERED FACTS MUST BE SUFFICIENT TO ESTABLISH BY CLEAR AND CONVINCING evidence that,if not for a constitutional error,no reasonable factfinder WOULD HAVE FOUND YOU GUILTY OF THE OFFENSE.SEE 28 U.S.C. STAT.2254 (d)(2)(B): THIS HAS BEEN PROVEN BY PETITIONER SCHMITT AT Id.

FILING OF A SECOND OR SUCCESSIVE,STAT.2254 PETITION.SEE 28 U.S.C. STAT.2244

(b) (YOU MAY BE ALLOWED TO BRING A SUCCESSIVE PETITION IF YOU CAN SHOW EITHER:

- (a) NEWLY DISCOVERED FACTS WHICH COULD NOT HAVE BEEN DISCOVERED EARLIER WITH DUE DILIGENCE,AND WHICH ESTABLISHES BY CLEAR AND CONVINCING EVIDENCE THAT,IF NOT FOR CONSTITUTIONAL ERROR,NO REASONABLE FACTFINDER COULD HAVE FOUND A PERSON GUILTY OF THE OFFENSE.SEC.28 U.S.C. STAT.2254 (b)(2)(B): ALSO IT MAY BE SUCCESSIVE IF PETITION IS DENIED.

THIS HAS BEEN VERIFIED AT ID BY PETITIONER SCHMITT:

TO BRING A SUCCESSIVE HABEAS PETITION,A PERSON MUST FIRST ASK THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT FOR PERMISSION (LEAVE) TO FILE A SUCCESSIVE PETITION.SEE 28 U.S.C. STAT.2244 (3) TO THE SEVENTH CIRCUIT COURT OF APPEALS:

IT IS HEREBY REQUESTED BY PETITIONER SCHMITT THAT HE RECEIVES LEAVE OF COURT TO BRING A PETITION FOR SUCCESSIVE HABEAS CORPUS,AND/OR SEEKING FOR THIS COURT TO ISSUE A "CERTIFICATE OF APPEALABILITY",BECAUSE THE DISTRICT COURT REFUSED ONE.

THE PETITIONER MR. SCHMITT,HAS EXPLAINED HIS SITUATION AS TO ONE OF EXCEPTIONS AT Id.

PROCEDURAL DEFAULT:

THERE HAS BEEN NO STATE PROCEDURAL RULE USED TO DENY RELIEF ON THE ISSUES PRESENTED AT Id.,FOR WHICH THE PETITION WAS NEVER ANSWERED BY THE STATE OR COUNTY COURTS.JUST NO REPLY SINCE PRESENTED TO RICHLAND COUNTY COURT ON

SEE FORD V. GEORGIA, 498 U.S. 411 (1991); LIEGAKOS C. COOKE, 106 F.3d 1381, 1384-85 (7th Cir. 1997); AND FAILURE TO FOLLOW "STATE PROCEDURES AND RESULTING PREJUDICE SEE GRAY V. NETHERLAND, 518 U.S. 152 (1966).

PETITIONER'S BURDENS:

UNDER AEDPA, STAT.2254, PETITIONER MUST "REBUT" PRESUMPTION BY CLEAR AND CONVINCING EVIDENCE: TO FIND THE STATE IS INCORRECT OF ANY STATEMENT: SEE 28 U.S.C. STAT.2254 (E)(1):

UNDER AEDPA, NO SHOW OF THE STATE COURT ERRED AND THAT THE ERROR PREJUDICED DEFENDANT'S/PETITIONER'S DEFENSE.

IF A PERSON FILES A PRO SE STAT.2254 PETITION, YOU CAN ASK THE FEDERAL COURT TO APPOINT A LAWYER TO REPRESENT A PERSON. A PERSONS COMPLEXITIES OF HABEAS PROCEEDINGS, YOUR LIMITED ACCESS TO LEGAL MATERIALS, YOUR LIMITED ACCESS TO THE TRIAL AND APPELLATE RECORDS IN YOUR STATE CASE, INABILITY TO CONDUCT FACTUAL INVESTIGATION FROM PRISON.

PETITIONER IS NOT COMPETENT TO FILE LAW CONCERN BECAUSE MR. SCHMITT ONLY HAS A THIRD GRADE LEVEL FOR READING AND WRITING AND IS 60-YEARS OLD.

MR. SCHMITT HAS EXPLAINED THE ISSUES IN HIS PREVIOUS DOCUMENTS TO THE COURT.

THE DISTRICT COURT IN WESTERN WISCONSIN, REFUSED A "CERTIFICATE OF APPEALABILITY-WITH PREJUDICE").

MR. FREDERICK R. SCHMITT, IS REQUESTING THE SEVENTH CIRCUIT COURT OF APPEALS TO REVIEW THE REFUSAL ISSUE A CERTIFICATE OF APPEALABILITY AND ALSO THE ISSUE OF "BEING UNTIMELY FOR FILING".

RESPECTFULLY SUBMITTED,

X Frederick R. Schmitt

FREDERICK R. SCHMITT NO: 525116
REDGRANITE CORRECTIONAL INSTITUTION
P.O. BOX 925
REDGRANITE, WI 54970-0925
AUGUST 14, 2016
AN INDIGENT PRO SE INMATE IN PRISON

UNITED STATES COURT OF APPEALS SEVENTH CIRCUIT
CLERK OF COURT

FREDERICK R. SCHMITT,
PETITIONER,

v.

CASE NO: 16-CV-93-jdp

RICHLAND COUNTY CLERK OF CIRCUIT COURT, AND
JUDGE LEINEWEBER, ET AL.,
RESPONDENTS.

MOTION FOR APPOINTMENT OF COUNSEL

FREDERICK R. SCHMITT, PETITIONER IN THIS ACTION, RESPECTFULLY MOVES THIS COURT FOR THE ENTRY OF AN ORDER PURSUANT TO 28 U.S. STAT. 2254 (h), 18 U.S.C. STAT. 3006 a, AND RULE (C) OF THE RULES GOVERNING SECTION 2254 CASES IN THE UNITED STATES APPEALS COURT SEVENTH DISTRICT APPOINTING COUNSEL TO REPRESENT PETITIONER FOR PURPOSES OF THE PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. STAT. 2254, FILED SIMUTANEOUSLY WITH THIS MOTION.

PETITIONER IS NOT A LAWYER AND IS NOT TRAINED IN LEGAL ARGUMENTS AND ACCORDINGLY, HE WOULD BE UNABLE TO ADEQUATELY PRESENT HIS ARGUMENTS TO THE COURT AND TO ASSIST THE COURT ON ADDRESSING HIS CLAIMS WITHOUT THE ASSISTANCE OF COUNSEL.

BY APPOINTING A QUALIFIED ATTORNEY TO REPRESENT PETITIONER REGARDING HIS HABEAS PETITION. SEE ALSO BATTLE V. ARMATROUT, 902 F.2d 701, 702 (8TH Cir. 1990) ("APPOINTMENT OF COUNSEL WOULD BENEFIT...THE COURT BY ALLOWING COUNSEL TO DEVELOPE MR. SCHMITT'S UMENTS AND FOCUS THE COURT'S ANALYSIS"), TAYLOR V. PEGELOW, 335 F.2d 147 (4TH Cir. 1964) ("INNUMERABLE DIFFICULT QUESTIONS AND INORDINATE WASTE OF TIME OF JUDGES AND STATES LAWYERS..MIGHT...HAVE BEEN AVOIDED IF THE DISTRICT COURT HAD APPOINTED COUNSEL.")

RESPECTFULLY SUBMITTED,

X

FREDERICK R. SCHMITT NO:525116
REDGRANITE CORRECTIONAL INSTITUTION
P.O. BOX 925
REDGRANITE,WI 54970-0925
DATED AUGUST 14, 2016
AN INDIGENT PRO SE INMATE IN PRISON

ARGUMENTS:

REASONS OF APPOINTED ATTORNEY IS THAT I WAS GIVEN AN APPOINTED ATTORNEY FROM PRIVATE PRACTICE AND THIS ATTORNEY HAS DONE ABSOLUTELY NOTHING FOR ME AS TO REPRESENT ME AS A CLIENT FOR TRIAL.

REASONS:

- (A) I,DEFENDANT THEN NOW PLAINTIFF SCHMITT,HAD ONLY A 3rd GRADE WRITING AND READING ABILITY;
- (B) I WAS/AM INDIGENT;
- (C) TRIAL ATTORNEY FAILED IN APPLYING A COMPETENCY HEARING FOR THE DEFENDANT SCHMITT;
- TRIAL ATTORNEY FAILED TO OBJECT TO "INTENT" TO COMMIT SEXUAL ASSAULT BY THE THEN DEFENDANT SCHMITT;
- (E) TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO INVESTIGATE MEDICAL AND PSYCHOLOGICAL EVIDENCE OF THEN DEFENDANT SCHMITT;
- (F) TRIAL ATTORNEY FAILED TO CALL AN EXPERT WITNESS TO COMBAT COMPETENCY OF THE THEN DEFENDANT,SCGMITT;
- (G) TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO REQUEST INSTRUCTIONS TO CLARIFY FINDINGS "JURY" BENCH TRIAL JUDGE" HAD TO MAKE IN ORDER TO CONVICT THEN DEFENDANT SCHMITT.

TO GET COUNSEL APPOINTED, YOUR CASE MUST BE VERY COMPLEX AND YOU HAVE SHOWN LITTLE ABILITY TO ARGUE THE CASE PRO SE, BUT I,MR.SCHMITT, DID ARGUE MY CASE TILL I AM BLUE IN MY FACE BUT I CAN NOT DO THIS BY MYSELF.

Frederick R. Schmitt

FREDERIC R. SCHMITT NO: 525116

**U.S. District Court
Western District of Wisconsin (Madison)
CIVIL DOCKET FOR CASE #: 3:16-cv-00093-jdp**

Schmitt, Frederick v. Richland County Clerk of Cir. Ct et al
Assigned to: District Judge James D. Peterson
Referred to: Magistrate Judge Stephen L. Crocker
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 02/11/2016
Jury Demand: None
Nature of Suit: 530 Habeas Corpus
(General)
Jurisdiction: Federal Question

Petitioner

Frederick R. Schmitt

represented by **Frederick R. Schmitt**
525116
Redgranite Correctional Institution
1006 County Rd. EE
P.O. Box 925
Redgranite, WI 54970-0925
(920) 566-2600
PRO SE

V.

Respondent

Richland County Clerk of Cir. Ct

represented by **Gregory M. Weber**
Wisconsin Department of Justice
P.O. Box 7857
Madison, WI 53707
608-266-3935
Fax: 608-266-9594
Email: federalordersca@doj.state.wi.us
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Respondent

Judge Leineweber

represented by **Gregory M. Weber**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
02/11/2016	<u>1</u>	Petition for Writ of Habeas Corpus – State, filed by Petitioner Frederick R. Schmitt. (Case randomly assigned to District Judge James D. Peterson.) (Attachments: # <u>1</u> Certification as to Three or More Dismissals Under Wis. Stat. 801.02(7)(d), # <u>2</u> Envelope) (nln) (Entered: 02/11/2016)
02/11/2016	<u>2</u>	Motion for Appointment of Counsel, by Petitioner Frederick R. Schmitt. (nln),(ps) (Entered: 02/11/2016)
02/11/2016	<u>3</u>	Letter from petitioner Frederick R. Schmitt requesting court order directing RGCI to allow petitioner to use his release account funds to pay filing fee. (nln),(ps) (Entered: 02/11/2016)
02/11/2016	<u>4</u>	Letter from petitioner Frederick R. Schmitt notifying court that his family will submit filing fee on his behalf. (nln),(ps) (Entered: 02/11/2016)
02/16/2016		Filing fee received: \$5.00, receipt number 34690025235. (nln),(ps) (Entered: 02/17/2016)
06/20/2016	<u>5</u>	Letter Requesting Status Update by Petitioner Frederick R. Schmitt. (Attachments: # <u>1</u> Envelope) (nln),(ps) (Entered: 06/20/2016)

07/01/2016	6	Letter from Clerk's Office in response to § letter from petitioner. (nln),(ps) (Entered: 07/01/2016)
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DEPARTMENT OF CORRECTIONS
Division of Adult Institutions
DOC-184 (Rev. 10/2011)

DISBURSEMENT REQUEST SOLICITUD DE DESEMBOLSO

WISCONSIN
Administrative Code
Chapter DOC 309

OFFENDER REQUEST - To be completed by the offender. Please print or type all items except your signature
SOLICITUD DE OFENSOR - Debe ser completado por ofensor. Por favor imprima todo excepto su firma

OFFENDER NAME NOMBRE DE OFENSOR

FREDERICK R. SCHMITT

DOC NUMBER
NUMERO

525116

FACILITY NAME (Abbreviate)
Instalación (Abrevie)

RGCI

HOUSING UNIT/FLOOR/CELL
UNIDAD / PISO / CELDA

GW 225

PAY TO NAME NOMBRE A QUIEN SE PAGUE

STREET ADDRESS DIRECCION DE CALLE

CITY CIUDAD

STATE ESTADO ZIP CODIGO POSTAL

BUSINESS OFFICE RGCI

REQUEST FOR: SOLICITUD PARA:

- | | |
|---|---|
| <input type="checkbox"/> 4 - Photos Fotos | <input type="checkbox"/> 8 - Savings Withdrawal Desembolso de Ahorros |
| <input checked="" type="checkbox"/> 1 - Copies Copias | <input type="checkbox"/> 5 - State ID Photo Foto ID del Estado |
| <input type="checkbox"/> 2 - Shipping/Freight Envio /Carga | <input type="checkbox"/> 6 - Savings Bond Purchase Compra Bonos de Ahorro |
| <input type="checkbox"/> 3 - Postage Posta de Correo | <input type="checkbox"/> 7 - Savings Deposit |
| <input type="checkbox"/> 9 - Property Purchase (reason required)* Compra de Propiedad (requiere razon)* | |
| <input checked="" type="checkbox"/> 10 - Other (reason required)* Otro (requiere justificacion)* | |
| <input type="checkbox"/> 11 - Route Check to: Envie cheque a: _____ | |

FUNDING SOURCE: FUENTE DE FONDOS

REG - Regular Account Cuenta Regular WR - Work Release Account Cuenta de Trabajo REL - Release Account Cuenta de Liberacion Legal Loan Prestamo Legal

*REASON FOR REQUEST (Must complete if you choose 9 or 10 above)

*RAZON POR LA SOLICITUD (Debe completar si escoje casillas 9 o 10 arriba)

(10) INDIGENCY REPORT TO FEDERAL COURT

Certified 16CV93

OFFENDER SIGNATURE FIRMA OFENSOR(A)

DATE SIGNED
FECHA DE FIRMA

Frederick Schmitt 7-26-16

INDIVIDUAL ITEMS REQUESTED Articulos Individuales Solicitados

AMONNT (?)

508

AMOUNT CANTIDAD

\$

\$

\$

OFFENDER ID VERIFIED
ID DE OFENSOR CHEQUEADO

Staff Initials: *EH*

Total Amount Requested
Suma Total Solicitudada:

\$

DECISION - To be Completed by Department Staff Only

DECISION- Debe ser Completada por Empleados Solamente

DISBURSEMENT APPROVED BY SIGNATURE:

W.D.S.

DATE SIGNED

\$516

No Check: DMV Acct, Other: _____

Deliver Check to:

Release Date (if REL acct is requested)

CHECK#

DATE PAID

SUPERVISOR APPROVAL SIGNATURE (If required)

EXHIBIT A

DATE SIGNED

REASON REQUEST WAS DENIED

REQUEST DENIED BY SIGNATURE

EXHIBIT A

Request denied due to postage

FREDERICK R. SCHMITT

525116

RGCI

GW 225

PAY TO NAME NOMBRE A QUIEN SE PAGUE STREET ADDRESS DIRECCION DE CALLE CITY CIUDAD STATE ESTADO ZIP CODIGO POSTAL

U.S.P.S.

RGCI

REQUEST FOR: SOLICITUD PARA:

- | | |
|---|---|
| <input type="checkbox"/> 4 - Photos Fotos | <input type="checkbox"/> 8 - Savings Withdrawal Desembolso de Ahorros |
| <input type="checkbox"/> 1 - Copies Copias | <input type="checkbox"/> 9 - Property Purchase (reason required)* Compra de Propiedad (requiere razon)* |
| <input type="checkbox"/> 2 - Shipping/Freight Envio /Carga | <input type="checkbox"/> 10 - Other (reason required)* Otro (requiere justificacion)* |
| <input checked="" type="checkbox"/> 3 - Postage Posta de Correo | <input type="checkbox"/> 11 - Route Check to: Envie cheque a: _____ |

FUNDING SOURCE: FUENTE DE FONDOS

REG - Regular Account Cuenta Regular WR - Work Release Account Cuenta de Trabajo REL - Release Account Cuenta de Liberacion Legal Loan Prestamo Legal

*REASON FOR REQUEST (Must complete if you choose 9 or 10 above)

*RAZON POR LA SOLICITUD (Debe completar si escoje casillas 9 o 10 arriba)

FEDERAL COURT

INDIVIDUAL ITEMS REQUESTED Articulos Individuales Solicitados

POSTAGE

AMOUNT CANTIDAD

\$

\$

\$

\$

OFFENDER SIGNATURE FIRMA OFENSOR(A)

DATE SIGNED

FECHA DE FIRMA

Frederick Schmitt 7-28-16

Staff Initials: *AH*

Total Amount Requested
Suma Total Solicitudada:

\$

2.41

DECISION - To be Completed by Department Staff Only

DECISION- Debe ser Completada por Empleados Solamente

DISBURSEMENT APPROVED BY SIGNATURE:

Cot Cl

DATE SIGNED

7/28/16

No Check: DMV Acct, Other: _____

Deliver Check to:

Release Date (if REL acct is requested)

CHECK#

DATE PAID

SUPERVISOR APPROVAL SIGNATURE (If required)

EXHIBIT B

DATE SIGNED

((8))

REASON REQUEST WAS DENIED

8376

LIST OF EXHIBITS LISTED FOR PLAINTIFF SCHMITT'S HABEAS
COUNTY CASE 06 CF 39 ----- 16 CV -193 -jdp

- (1.) EXHIBIT (A) DOCKET SHEET: P.101:
- (2.) EXHIBIT (B) MOTION FOR APPOINTMENT OF COUNSEL DATED 01-28-2016, redated
JULY 26, 2016: P.102:
- (3) EXHIBIT (C) MOTIONS TO RICHLAND COUNTY CIRCUIT COURT.
p.103:
- (4) LETTER FROM PUBLIC DEFENDER DATED 12-30-2008 DENIED APPEAL:
EXHIBIT (D): P.104:
- (5) ORDER APPOINTING COUNSEL: ATTY MARTHA K. ASKINS: DATED 09-19-2008:
EXHIBIT (E): P.105:
- (6) LETTER RICHLAND COUNTY CIRCUIT COURT: DATED JUNE 04, 2008: ORDER TO SHOWCAUSE:
EXHIBIT (F) P.106:
- (7) LETTER FROM RICHLAND CIRCUIT COURT: DATED APRIL 16, 2008: PETITION AND ORDER FOR
APPOINTMENT FEES: PAID TO ATTY GERALD C. OPGENORTH FOR \$3,257.50:
EXHIBIT (G) P.107:
- (8) LETTER FROM RICHLAND CIRCUIT COURT: DATED 02-19-2006 NOTICE OF INTENT TO SEEK
POST-DISPOSITION RELIEF:
EXHIBIT (H) P.108:
- (9) LETTER FROM RICHLAND COUNTY CIRCUIT COURT: DATED APRIL 25, 2007:
EXHIBIT (I) P.109:
- (10) PETITION FOR APPOINTMENT OF COUNSEL, AFFIDAVIT OF INDIGENCY AND ORDER: DATED
04-16-2007:
EXHIBIT (J) P.110:
- (11) LETTER FROM RICHLAND COUNTY CIRCUIT COURT: DATED MARCH 19, 2007:
EXHIBIT (K) P.111:
- (12) LETTER FROM RICHLAND COUNTY CIRCUIT: DATED MAY 30, 2006:
EXHIBIT (L) P.112:

X Frederick Schmitt

DEFENDANT/PLAINTIFF INMATE, FREDERICK R. SCHMITT DOCKET REPORT

CASE 06CF39

- (1) CRIMINAL COMPLAINT DATE: 04-25-2006
- (2) ARREST DATE: 04-25-2006;
- (3) TRIAL DATE: 11-15-2007;
- (4) JUDGMENT DATE: 11-15-2007;
- (5) SENTENCING DATE: 02-07-2008;
REPEATED SEXUAL ASSAULT: STAT.948.025(1)(A);
- (6) AUGUST 01, 2008; FROM WIS.STATE PUBLIC DEFENDER OFFICE; DENIED , AN ATTORNEY, DOCUMENTS FROM THE RICHLAND COUNTY CLERK'S OFFICE TO PROCESS YOUR CASE WAS NEVER SENT TO US.
- (7) OCTOBER 17, 2008, FROM PUBLIC DEFENDER OFFICE,CASE 06CF39, SPD 08S-52-L-R00217, (SPD) APPOINTED AN ATTORNEY,COST OF LEGAL REPRESENTATION PURSUANT TO STAT.977.075, cost of 480.00 IF PAID BY 11-26-2008;
- (8) DECEMBER 30, 2008; FROM PUBLIC DEFENDER OFFICE, PER PUBLIC DEFENDER MARTHA K. ASKINS, THERE WERE PROBLEMS IN YOUR CASE THAT COULD GIVE RISE TO A CLAIM FOR PLEA WITHDRAWAL, BEING ABLE TO TAKE YOUR CASE TO TRIAL, BUT I HAVE DECIDED NOT TO APPEAL AND I AM CLOSING YOUR CASE.
- (9) MAY 24, 2015: FROM MR.SCHMITT, TO RICHLAND COUNTY CLERK OF CIRCUIT COURT, REGARDING THE BILL FOR ATTORNEY FEE OF \$3,277.50 DUE THIS COURT FOR ATTORNEY BY THIS COUNTY.
- (10) MR.SCHMITT TO REDGRANITE PRISON OFFICIALS AS AN "OFFENDER COMPLAINT" Re: THE PRISON TAKING OUT 25 o/o OUT OF HIS ACCOUNT PER MONTH OR WHEN ANY OTHER MONEY ARRIVES.
- (11) 06-01-2015 FROM THE PRISON STAFF', RETURNED, DENIED.
- (12) 06-04-2015- from richland county court- NOTICE OF ASSIGNMENT OF JUDGE, JAMES P. CZAJKOWSKI:
- (13) 06-08-2015; FROM RICHLAND COUNTY COURT, "NOTICE OF HEARING AT, 06-24-2015, 03:00pm:
- (14) 06-09-2015; from mr.schmitt to wisconsin JUSTICE DEPT. FOR IF THERE WERE THREE OR MORE CIVIL ACTIONS PURSUANT TO STAT.801.02(7)(D).
- (15) ANSWER FROM WIS.JUSTICE PEPARTMENT AS(NONE): 06-16-2015;
- (16) 06-10-2015: FROM MR. SCHMITT TO RICHLAND COUNTY COURT:CASE 06-CF39: NOTIFYING THE COURT THAT THEY HAVE TO MAKE ARRANGEMENTS, NOT MR.SCHMITT:
- (17) 06-13-2015 FROM MR. SCHMITT TO TRIAL ATTY GERALD C. OPGENORTH:NEVER HAD RECEIVED ANY ANSWER:

EXH-A

(1)

(10)

P-101

- (18) 06-18-2015: FROM PUBLIC DEFENDER OFFICE:ARGUABLE ISSUES AS TO WHO SHOULD PAY FOR THE COUNTY ATTORNEY HE WAS APPOINTED: PUBLIC DEFENDER OFFICE REFUSED TO PAY THAT BILL:(?)
- (19) 06-22-2015: FRON MR. SCHMITT TO PUBLIC DEFENDER OFFICE:RE:ATTY ASKINS , A RECONSIDERATION/REDRESS,CASE 06CF39 WAS DENIED:
- (20) AN AFFIDAVIT OF DEFENDANT,MR.SCHMITT:Re: (NO PERJURY COMMITTED BY HIM):
- (21) 07-01-2015, FROM MR.SCHMITT, TO RICHLAND COUNTY COURT,MOTION FOR NEWLY DISCOVERED EVIDENCE,STAT.805.15, 33:03; MOTION FOR FRAUD WITH INTENT,STAT. 971.34; MOTION FOR INTENT TO INFLUENCE,STAT.946.65;motion to compel an answer,stat.809.51, 11.34:
COURT DID NOT RESPOND:
- (22) 07-03-2015-FROM MR.SCHMITT TO RICHLAND COUNTY DISTRICT ATTORNEY OFFICE: A MOTION FOR A (JOHN DOE)HEARING Re: "FRAUD BY THE COURT AND APPOINTED CONNTY ATTORNEY BY THE JUDGE,
- (23) 07-07-2015 DENIED TO INVESTIGATE ANY ALLEGED CRIMES:
- (24) 07-08-2015: FROM PUBLIC DEFENDER OFFICE:WE RECEIVED YOUR GRIEVANCE:WILL INVESTIGATE:
- (25) 08-08-2015: FROM PUBLIC DEFENDER OFFICE: Re: APPOINTMENT OF DEFENDER, ATTORNEY ASKINS:DENIAL,CLOSED MR.SCHMITT'S CASE,FOR AN APPEAL.
- (26) FROM MR.SCHMITT TO DISTRICT ATTORNEY OF RICHLAND COUNTY:07-09-2015:"JOHN DOE HEARING" OF A DENIAL BY THE D.A.:
- (27) 07-11-2016 "SWORN AFFIDAVIT" OF NO PERJURY BY HIM: TO "OLR" "GRIEVANCE":
- (28) 07-11-2015: FROM MR.SCHMITT TO RICHLAND COUNTY COERE CLERK:NO PERJURY TO BY HIM:
- (29) 07-14-2015: FROM "OLR",GRIEVANCE Re: TRIAL ATTORNEY OPGENORTH:WILL INVESTIGATE:
- (30) 07-18-2015: FROM MR. SCHMITT TO PUBLIC DEFENDER OFFICE C/O MR. EHmann:
- (31) 07-30-2015: FROM "OLR",Re: ATTY OPGENORTH,DENIED ,CLOSED THE INVESTIGATION:
- (32) 08-04-2015: FROM MR.SCHMITT TO PUBLIC DEFENDER,MR. EHmann:Re: COMMENTS MADE BY MR. EHmann AND HIS COMMENTS IN A LETTER OF 07-08-2015 TO MR.SCHMITT:
- (33) 08-04-2015: A SWORN AFFIDAVIT FROM MR. SCHMITT Re: NO PERJURY BY HIM AS UNDER "SCR"22.02(4),REVIEW:
- (34) 08-06-2015: FROM MR. SCHMITT TO SUPREME COURT OF WIS.,TO MS. CYNTHIA SCALLY: Re: DIRECT TO MS. SCHALLY'S STATEMENT OF ATTY OPGENORTH'S FEE WAS DISMISED AFTER A FULL HEARING ON JUNE 24,2015:
- (35) 08-04-2015: FROM MR. SCHMITT, "SCR" 22.02(4) REVIEW AND NO PERJURY BY HIM:
- (36) 08-11-2015: FROM PUBLIC DEFENDER OFFICE:Re THE CLOSED APPEAEL CASE PER MR. EHmann: NO FURTHER ACTION IN THIS MATTER:
- (37) 08-11-2015: FROM "OLR": Re: ATTY OPGENORTH:FOR A REVIEW;DENIED:NO FURTHER

EXHr A

(2)

(11)

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ACTION WILL BE TAKEN , YOUR CASE REMAINS CLOSED: PER MR. SELLEN:

- (38) 08-14-2015: FROM MR. SCHMITT TO SUPREME COURT OF WISCONSIN: Re: ATTY OPGENORTH: TO MR. SELLEN,
- (39) 10-10-2015: FROM MR. SCHMITT TO SUPREME COURT, Re: A REQUEST FOR A WRIT OF MANDAMUS BY A SUPERIOR COURT TO COMPEL ATTY OPGENORTH TO RETURN ANSWERS TO THE DEFENDANT, HIS CLIENT, MR. SCHMITT;
- (40) 10-16-2015 : FROM SUPREME COURT OF WIS. OFFICE OF THE CLERK: SCHMITT'S LETTER TO COMPEL A WRIT OF MANDAMUS TO ATTY OPGENORTH, DENIED CANNOT TAKE ACTION UPON YOUR LETTER, PER CHRISTOPHER PAULSEN;
- (41) 10-23-2015: FROM MR. SCHMITT TO SUPREME COURT OF WIS.: RETURN LETTER REGARDING SCHMITT'S PETITION WRIT OF MANDAMUS, THE COURT'S DENIAL;
- (42) 11-02-2015: CASE 2006CF000039:, APPEAL NO: 2015AP002225-W: FILING FEE OF \$195.00 IS DUE: SUPREME COURT, WIS.
- (43) 11-02-2015: FROM . . . ACKNOWLEDGEMENT OF FILING OF WRIT OF PETITION FOR WRIT OF MANDAMUS: WIS. SUPREME COURT.
- (44) 12-06-2015: FROM . . . : CASE 06CF39, A PETITION FOR WAIVER OF FEES HAS BEEN FILED IN THE ABOVE MATTER. THE PETITION ESTABLISHES INDIGENCY FOR PURPOSES OF PROSECUTING THIS ACTION. PROCED WITHOUT PAYMENT: WIS. SUPREME CT.
- (45) COPY OF A PETITION UNDER 28 U.S.C. STAT.2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY: CASE 00CF39:DATED 02-11-2006.
- (46) 01-10-2016: FROM MR. SCHMITT TO WIS.JUSTICE DEPT. FOR THREE OR MORE DISMISSALS:
- (47) FROM WIS.JUSTICE DEPT. ANSWER OF (NO) DISMISSALS:
- (48) LETTER FROM RICHLAND COUNTY: MOTION TO SUPPRESS-MIRANDA VIOLATION:

X Frederick Schmitt

EXH-A

(3)
(12)

P-101

UNITED STATE DISTRICT COURT WESTERN DISTRICT WISCONSIN

FREDERICK R. SCHMITT,

PETITIONER,

v.

CASE NO: 06cf39

16-CV-93-jdp

RICHLAND COUNTY CLERK OF
CIRCUIT COURT, AND JUDGE LEINEWEBER, ET AL.,
RESPONDENTS.

MOTION FOR APPOINTMENT OF COUNSEL

FREDERICK R. SCHMITT, PETITIONER IN THIS ACTION, RESPECTFULLY MOVES THIS COURT FOR THE ENTRY OF AN ORDER PURSUANT TO 28 U.S. STAT.3254 (h), 18 U.S.C. STAT.3006a, AND RULE (C) of the rules governing section 2254 CASES IN THE UNITED STATES DISTRICT COURTS, APPOINTING COUNSEL TO REPRESENT PETITIONER FOR PURPOSES OF THE PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. STAT.2254, FILED SIMUTANEOUSLY WITH THIS MOTION.

PETITIONER IS NOT A LAWYER AND IS NOT TRAINED IN LEGAL ARGUMENT AND ACCORDINGLY, HE WOULD BE UNABLE TO ADEQUATELY PRESENT HIS ARGUMENTS TO THE COURT AND TO ASSIST THE COURT ON ADDRESSING HIS CLAIMS WITHOUT THE ASSISTANCE OF COUNSEL.

BY APPOINTING A QUALIFIED ATTORNEY TO REPRESENT PETITIONER REGARDING HIS HABEAS PETITION. SEE ALSO BATTLE V. ARMATROUT, 902 F.2d 701, 702 (8TH Cir.1990) ("APPOINTMENT OF COUNSEL WOULD BENEFIT...THE COURT BY ALLOWING COUNSEL TO DEVELOPE MR. SCHMITT'S ARGUMENTS AND FOCUS THE COURT'S ANALYSIS"); TAYLOR V. PEGELOW, 335 F.2d 147 (4TH Cir.1964) ("INNUMERABLE DIFFICULT QUESTIONS AND INORDINATE WASTE OF TIME OF JUDGES AND STATES LAWYERS..MIGHT...HAVE BEEN AVOIDED IF THE DISTRICT COURT HAD APPOINTED COUNSEL.")

RESPECTFULLY SUBMITTED,

Frederick Schmitt

FREDERICK R. SCHMITT NO: 525116

(1)

(13)

Exh-B

P-102

REDGRANITE CORRECTIONAL INSTITUTION
P.O. BOX 925
REDGRANITE, WI 54970-0925

Dated JANUARY 28, 2016 REDATED JULY 26, 2016:
AN INDIGENT PRO SE INMATE IN PRISON

ARGUMENTS:

REASONS OF APPOINTED ATTORNEY IS THAT I WAS GIVEN AN APPOINTED ATTORNEY FROM PRIVATE PRACTICE AND THIS ATTORNEY HAS DONE ABSOLUTELY NOTHING TO REPRESENT ME AS A CLIENT FOR TRIAL.

REASONS:

- (A) I, DEFENDANT SCHMITT, HAD ONLY A 3rd GRADE WRITING AND READING ABILITY;
- (B) I WAS/AM INDIGENT;
- (C) TRIAL ATTORNEY FAILED IN APPLYING A COMPETENCY HEARING FOR DEFENDANT;
- (D) TRIAL ATTORNEY FAILED TO OBJECT TO "INTENT" TO COMMIT SEXUAL ASSAULT BY THE DEFENDANT;
- (E) TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO INVESTIGATE MEDICAL AND PSYCHOLOGICAL EVIDENCE OF DEFENDANT;
- (F) TRIAL ATTORNEY FAILED TO CALL AN EXPERT WITNESS TO COMBAT COMPETENCY OF THE THEN DEFENDANT, ME. SCHMITT;
- (G) TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO REQUEST INSTRUCTIONS TO CLARIFY FINDINGS "JURY""BENCH TRIAL JUDGE" HAD TO MAKE IN ORDER TO CONVICT DEFENDANT AND ETC.;

TO GET COUNSEL APPOINTED, YOUR CASE MUST BE VERY COMPLEX AND YOU HAVE SHOWN LITTLE ABILITY TO ARGUE MY CASE PRO SE, BUT I, MR. SCHMITT, DID ARGUE MY CASE TILL I AM BLUE IN MY FACE BUT I CAN NOT DO THIS BY MYSELF.

I WANT TO BE HONEST WITH YOU, I HAD AN INMATE THAT IS A PARALEGAL HELP ME OUT.

x Frederick Schmitt

(2)

(14)

EXH-B

P-102

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WISCONSIN

FREDERICK R. SCHMITT,

PETITIONER

OPINION AND ORDER

v.

16-CV-93-jdp

RICHLAND COUNTY CLERK OF CIRCUIT COURT,

AND JUDGE LEINEWEBER, ET AL.,

RESPONDENTS.

THIS IS A RESPONCE FROM PETITIONER FREDERICK R. SCHMITT,WHO IS SEEKING A HABEAS CORPUS UNDER 28 U.S.C. STAT.2254 TO CHALLENGE HIS 2007 CONVICTION FROM THE CIRCUIT COURT FOR RICHLAND COUNTY,WISCONSIN.

MR.SCHMITT IS PROCEEDING PRO SE ,BUT AN APPLICATION FOR AN ATTORNEY HAS BEEN FILED BUT THE JUDGE AS HIS LETTER, DATED JULY 16,2016,STATED NONE WAS FILED.I AM SENDING ANOTHER AS A SECOND COPY,TO THIS COURT.

ON THE SUBJECT OF INDIGENCY FOR MR. SCHMITT,HE DID NOT FILE ONE FOR THE \$5.00 FEC, BECAUSE HE PAID BY CHECK BUT MR.SCHMITT HAS ORDERED A INDIGENCY REPORT FROM THE DOC, REDGRANITE PRISON,OFFICE AND IS BEING MAILED IN A SEPARATE ENVELOPE BY THE PRISON. THIS IS IN HOPE OF RECEIVING AN ATTORNEY BECAUSE MR.SCHMITT ONLY HAS A THIRD GRADE READING LEVEL.THIS WAS VERIFIED IN HIS INDIGENCY FOR RICHLAND COUNTY COURT OF MR.SCHMITT'S TRIAL FOR AN APPOINTED ATTORNEY FOR TRIAL.

PLAINTIFF SCHMITT,HAS PREPARED A DOCKET SHEET FOR HIS COMPLAINT TO RICHLAND COUNTY COURT,SO I HOPE I CAN SOLVE THAT PROBLEM WITH THIS COURT.
THE DOCKET REPORT IS MARKED AS EXHIBIT (A), P-101.

AS TO THE ISSUE OF THE PLEA OF NO CONTEST ON 11-16-2007, the Appointed ATTORNEY, GERALD C. OPGENORTH, COERCED MR.SCHMITT, INTO THAT PLEA BECAUSE HE HAD NO TIME TO SPEND WITH HIM BECAUSE OF MR.SCHMITT'S LOW "IQ"AS TO A THIRD GRADER,IS WHY THE

(1) (A)

(15) -

THE REASONS PETITIONER CAN BE ABLE TO OVERCOME THE UNTIMELINESS:

- (1) MR. SCHMITT HAS BEEN PURSING HIS RIGHTS DILIGENTLY;
- (2) SEE DOCKET SHEET PREPARED BY MR. SCHMITT; EXHIBIT (A) P-101;
- (3) SOME EXTRAORDINARY CIRCUMSTANCES STOOD IN MR. SCHMITT'S WAY AND PREVENTED TIMELY FILING. SEE HOLLAND V. FLORIDA, 560 U.S. 631, 649 (2010). SEE EXHIBIT (C) P- 103:
PETITIONER HAS ESTABLISHED CLAIMS TO BE TOLLED;
- (4) PETITIONER HAS BASED HIS CLAIM OF ACTUAL INNOCENCE. SEE MCQUIGGIN V. PERKINS, 133 S.CT. 1924, 1931 (2013). SEE EXHIBIT (C) P.103 PAGES;
- (5) PLAINTIFF HARMED BY THE HARMLESS CONSTITUTIONAL ERRORS IN HIS OUTCOME OF TRIAL.
- (6) PLAINTIFF "IN LIGHT OF NEW EVIDENCE, IT IS MORE LIKELY THAN NOT THAT NO REASONABLE JUROR WOULD HAVE FOUND PETITIONER GUILTY BEYOND A REASONABLE DOUBT." SEE HOUSE V. BELL, 547 U.S. 518, 536-37 (2006)(QUOTING SCHLUPI, 513 U.S. AT 327).
- (7) THE ERRORS WERE PRESENTED AT/IN MR. SCHMITT'S TRIAL. SEE GLADNEY V. POLLARD, 799 F.3d 889, 898 (7TH Cir.2015).
- (8) PETITIONER DID FILE FOR AN ATTORNEY WHEN MR. SCHMITT, FILED HIS HABEAS CORPUS, ON JANUARY 28, 2016.
AS THE CRIMINAL JUSTICE ACT, 18 U.S.C. STAT.3006A (a)(2)(B) FOR A PETITIONER SEEKING HABEAS RELIEF UNDER 28 U.S.C. STAT.2254. SEE EXHIBIT (B) P.102.
- (9) PLAINTIFF HAS ORDERED AN INDIGENCE REPORT FROM THE DOC PRISON OFFICE ON JULY 26, 2016 AND SHOULD BE MAILED FROM PRISON OFFICE SHORTLY.
AS IN UNITED STATES V. SAROUN, 834 F.2d 1358, 1362 (7TH CIR. 1987).
- (10) THE MERITS OF PETITIONR'S ARE COLORABLE IN MR. SCHMITT'S CASE.
- (11) PETITIONER SCHMITT IS NOT ABLE TO INVESTIGATE CRUCIAL FACTS, BECAUSE HE IS IN PRISON.
- (12) IT IS POSITIVE THAT AN ASSISTANCE OF COUNSEL WILL MORE LIKELY EXPOSE THE REAL TRUTH BASED ON THE NATURE OF THE EVIDENCE.
- (13) PETITIONER SCHMITT IS NOT CAPABLE OF PRESENTING HIS CASE., BECAUSE THE LEGAL ISSUES RAISED ARE TOO COMPLEX. SEE WILSON V. DUCKWORTH, 716 F.2d 415, 418 (7TH Cir.1983).

PLEASE SEE THE EXHIBITS LISTED ON PAGE 100.

Frederick Schmitt

PETITIONER FREDERICK SCHMITT, WOULD LIKE TO THANK THIS COURT FOR GIVING ME A SECOND CHANCE IN ATTEMPTING TO PROVE THAT I AM INNOCENT OF THE CHARGES FILED AGAINST ME IN MY CASE.

AGAIN, I AM IN NEED OF AN ATTORNEY TO PROVE MY INNOCENCE AND TO PROVE THAT THE RICHLAND COUNTY APPOINTED ATTORNEYS, THE PROSECUTORS, AND THE BIASED COURT JUDGE MADE IN AFTER EIGHT YEARS DEMANDING ME TO PAY R THE ATTORNEY BILL FOR WHICH WAS ILLEGALLY CHARGED AND SUBMITTED.

RESPECTFULLY SUBMITTED,

X Fredrick Schmitt

FREDERICK R. SCHMITT NO: 525116

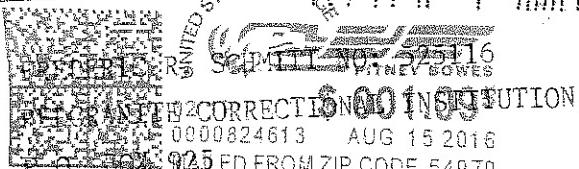
REDGRANITE CORRECTIONAL INSTITUTION

P.O. BOX 925

REDGRANITE, WI 54970-0925

DATED JULY 27, 2016

AN INDIGENT PRO SE INMATE IN A PRISON



REDGRANITE, WI 54970-0925

POSTAGE DUE

UNITED STATES SEVENTH CIRCUIT
COURT OF APPEALS
219 DEARBORN STREET
CHICAGO, IL 60604-1874